IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Sunder & Another Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.1166/2003)

2. Shiv Singh @ Hari Singh Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.0843/2003)

S. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 16-7-2003 in Sessions Case No.2/2003 passed by Sh. Ram Babu Chaturvedi, RHJS, Additional Sessions Judge (Fast Track) Gangapur City.

Date of Judgment: April 12, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. B.M. Sharma, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Sunder, Bijendra and Shiv Singh @ Hari Singh, the appellants herein, along with co-accused Shankar, Shiv Dutt and Harsahai, were put to trial before learned Additional Sessions Judge (Fast Track) Gangapur City, who vide judgment dated July 16, 2003 convicted and sentenced the appellants as under:-

Sunder Singh:
U/s.395/397 IPC:
To undergo rigorous imprisonment for ten years and fine of Rs.5,000/- in default to further suffer three months rigorous imprisonment.

U/s.458 IPC:
To undergo five years rigorous imprisonment and fine of

Rs.2000/- in default to further suffer two months rigorous imprisonment.

Bijendra and Shiv Singh @ Hari Singh:
U/s.395 IPC:

Each to undergo rigorous imprisonment for ten years and fine of Rs.5,000/- in default to further suffer three months rigorous imprisonment.

U/s.458 IPC:

Each to undergo five years rigorous imprisonment and fine of Rs.2000/- in default to further suffer two months rigorous imprisonment.

The substantive sentences were ordered to run concurrently.

Co-accused Shiv Dutt and Harsahai however stood acquitted of all the charges. Co-accused Shankar was convicted and sentenced under section 412 IPC but he did not choose to prefer appeal.

2. It is the prosecution case that on March 11, 2002 ASI Police Station Bamanwas recorded parcha bayan (Ex.P-32) of injured Smt. Mani Devi (Pw.19) wherein she stated that in the preceding night while she was sleeping in a room with her mother-in-law Rameshi Devi and daughter Vanita five persons broke open the door and entered the room. They demanded key and asked her to show the wealth when she did not hand over the key and made attempt to get up, knife and lathi blows were inflicted on her person. The miscreants took away all ornaments and three boxes of clothes. Thereafter they ran away and some villagers chased them. On that parcha bayan case under sections 458 and 380 IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Gangapur City. Charges under sections 458, 380, 395, 397 and 120B IPC were framed. The appellants denied the charges

and claimed trial. The prosecution in support of its case examined as many as 20 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. The first contention of learned counsel is that the prosecution could not establish beyond reasonable doubt that there was source of light at the place of incident. Since the incident occurred in the darkness it was not possible for the witnesses to have identified the miscreants. I have considered the submissions. In para 29 of the impugned judgment learned trial court observed thus:-

> "यह सत्य है कि पुलिस अन्वेषण में यह तथ्य नहीं आया है कि वक्त घटना मौके पर लालटेन का प्रकाश था। स्वयं अन्वेषण अधिकारी ने भी अपनी जिरह में यह स्वीकार किया है कि यदि मौके पर लालटेन का प्रकाश हो तो यह बिन्दु उसकी तफतीश में अवश्य आता।"

Vinita (Pw.10), who identified the appellants in the identification parade, although deposed at the trial that she had seen the faces of miscreants in the light of lantern, this fact was missing in her statement under section 161 CrPC (Ex.D-2). In the police statement (Ex.D-2) she categorically stated that:-

> लाइट नहीं थी अंधेरा हो रहा था

She further stated सामने आने पर मैं एक बदमाश को पहचान सकती हूं।

She however denied to have said these facts to police. It also appears that Vinita did not sustain any injury whereas Rameshwari (Pw.11) and Mani Devi (Pw.19) who sustained injuries, were not provided opportunity to

identify the miscreants in the identification parade. Vinita was 14 years of age at the time of incident and was studying at Gangapur and this fact was admitted by Mani Devi (Pw.19) in her cross examination thus:

> विनीता उसकी बच्ची उन दिनों गंगापुर में पढती थी

4. I also notice that appellant Sunder was arrested on July 13, 2002 but his identification parade was held on July 18, 2002. Similarly appellant Shiv Singh got arrested on August 1, 2002 and was subjected to identification on August 3, 2002. Appellant Vijendra was arrested on August 13, 2002 but his identification parade was held on August 17, 2002. Rameshwari (Pw.11) however deposed:-

> "मुलजिमान को पुलिस निशादेही हेतु लाई थी। उनको चाय पिलाई थी उन डकेतों को चाय पिलाई, तब देखा।"

5. Having analysed the material on record, I find that presence of Vinita at the time of incident is unnatural. It is highly unlikely that when Rameshwari and Mani Devi who were present in the room, sustained injuries, Vinita was left unnoticed by the miscreants. Act of Vinita in disowning her police statement Ex.D-2, also creates doubt about her presence in the room at the time of occurrence. The prosecution could not give explanation as to why Mani Devi and Rameshwari were not given opportunity to identify the miscreants.

6. In so far recovery of `Todia' and `anklet' at the instance of appellant Sunder is concerned, I find that in the police statement Mani Devi, Vinita, Rameshwari and Radhey Shyam did not say that `anklets' were

stolen in the incident. It was at the trial that for the first time these ornaments were introduced by the prosecution when these articles (Article 3 and Article 4) were shown to witness Rameshwari (Pw.11) in the trial court, she deposed that the said `anklets' did not belong to informant Mani Devi.

7. The aforequoted infirmities noted by me create doubt about the truthfulness of the prosecution story. It is no doubt true that the miscreants broke open the door of informant's house and committed dacoity but the charges against the appellants could not be proved and they are entitled to benefit of doubt.

8. For these reasons, I allow the appeals and set aside conviction and sentence of appellants under sections 458, 395 and 395/397 IPC. I acquit the appellant Sunder of the charges under sections 395/397 and 458 IPC. Appellants Bijendra and Shiv Singh @ Hari Singh also stand acquitted of the charges under sections 395 and 458 IPC. The appellants Sunder, Bijendra and Shiv Singh @ Hari Singh, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

(Shiv Kumar Sharma)J.

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